



FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON 20426

IN REPLY REFER TO:

January 4, 1983

Dear Bill:

I know that you are busy saving the Republic and guarding the ramparts.

But this means that you need some comic relief. So I enclose a little something along that line. It is an industry trade journal's comment on my latest state paper. You may find it amusing.

With every warm good wish for 1983 to you and to Sophia,

Sincerely,

Bernie

Bernard Wexler, Director
Office of Opinions and Review

Honorable William J. Casey
Director of Central Intelligence
Washington, D.C. 20505

P.S. I would like to ^{see} you one of these days. I need some advice-- and maybe a little help. My telephone number here at the FERC is 357-8100.



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What Gospel Of Matthew And George Bernard Shaw Said About Oil Pipelines

Who says bureaucrats can't speak English? The Federal Energy Regulatory Commission's 394-page ruling on the Williams oil pipeline case stands as a unique piece of government writing—filled with lucid, frequently florid, prose, replete with long excursions into history (the exploits of John D. Rockefeller and muckreker Ida Tarbell and related tales) and occasional flights into the bizarre. "Erudite, clever and ingenious," conceded Commissioner J. David Hughes, who filed the sole dissent to the opinion—adding that "there is much irrelevancy, undue length...and some sophistry that, for my literary and legal tastes, could have been omitted."

"It is hard to be sure about these things," the document mused at one point, trying to guess whether consumers would have benefited had the Interstate Commerce Commission regulated oil pipelines more vigorously. "Only fools speak with assurance about how hypothetical historical scenarios would have worked themselves out, about what North America would be like today had the colonists never broken with the Mother Country, about what course American history would have taken had the Republican National Convention of 1880 chosen Seward rather than Lincoln, about the precise nature of the foreign policy problems that the United States would be confronting in 1982 had Czar Nicholas II been born under a luckier star and blessed with more political acumen and had Lenin not abandoned the practice of law in Saint Petersburg for revolutionary politics, or about what the ultimate structure of the oil business would have been like if John D. Rockefeller had never been born."

FERC's ruling was authored by Bernard Wexler, director of the agency's Office of Opinions and Reviews. He is an attorney, making all the more remarkable the document's sardonic comments about the legal process. "The statutes on which we spend most of our time and energy were carefully designed to close gaps in the protective fabric that the states had previously fashioned

for the consumer's benefit. That is to say that even lawyers have been unable to dispute it," Wexler wrote, adding later that "these essays in legal fiction [that speculate about Congress' original intent in regulating oil pipelines] will breed more litigation, more opinions, and more law review articles. That will be good for printers, for producers of paper, for builders of library shelves and, of course, for lawyers. But it is unlikely to add anything to either the sum of human knowledge or the general welfare."

Other readings from Wexler's opus:

- "In petroleum economics, as in art and in love, beauty is in the eye of the beholder. What some find alluring others find repulsive. That is why rivers of ink have been spilled on the questions here presented. History shows that the source of this Niagara of words and numbers is a conflict between big business and small business. More specifically, what is involved (or what used to be involved) is a collision between Big Oil and Little Oil."

- "Oil pipeline owners have done nicely under the status quo. So their affection for it is unsurprising. Some may be reminded of Matthew 6:21: 'For where your treasure is, there shall your heart be also.' This is a factor that should be borne in mind. And we do bear it very much in mind. Business enterprises are not eleemosynary institutions. Nor are they supposed to be disinterested servants of the public interest. That is our role, not theirs. As George Bernard Shaw once observed, 'Cynicism may be a sin. But is rarely mistaken.'"

- "The industry is much enamored of the ICC's methodology, which it considers divinely inspired and legally required. So we expect it to applaud our decision to stick with the ICC's rate base methodology. It is less likely to be ecstatic over our views of depreciation and rate of return....Equal or even greater indignation can be expected from most of the industry's critics. They will undoubtedly censure us for willful failure to see the light of reason and for blind adherence to a methodology that was flawed from birth, that is a relic of the Paleolithic Age of economic regulation, that should therefore have been retired for senility decades ago, and that now belongs in a historical museum of regulatory pathology. "Of course, we think these criticisms mistaken..."

SEE ENERGY DAILY, December 8, 1982